

1904-020 Chancery Cases, Betterton + CoJ vs J. C. Munsey &
Lee Co.

Betterton, Whitlow, Munay

CA-Debt
T-Property

To the Hon. H. A. W. Skeen, Judge of the circuit court for Lee county, Virginia.

Humbly complaining, your complainants, J. N. Betterton and J. H. Whitlow, late partners in trade under the firm name and style of Betterton & Co., would respectfully represent and show unto your honor, that at the April term of the circuit court for Lee county, in the year 1892, your complainants recovered a judgment against J. C. Munsey for the sum of one hundred and forty two and forty three hundred dollars (\$142.43) with interest from the 25th day of March, 1890, until paid and ten and twenty five hundred dollars cost (\$10.25), a copy of said judgment is here filed, marked "Exhibit A" and asked to be treated as a part of this bill.

Your complainants allege that they instituted a chancery suit in the circuit court of Lee county, on their said judgment and proceeded to sell a small interest in land that the said J. C. Munsey owned in Lee county; said sale was made on September 21st, 1903, and the land brought the sum of forty five (\$45.00) dollars, and after payment of the cost of said suit ^{there} ~~it~~ was applied as a credit on said judgment the sum of thirteen and ninety four hundred dollars (\$13.94)

Your complainants allege that from the time of the rendition of the said judgment up to the date aforesaid, said J. C. Munsey was supposed to be totally insolvent.

Your complainants will further represent and show unto your honor, that their said attorney, on the 7th day of December, 1903, was informed that the said J. C. Munsey had a considerable sum of money on deposit in the First National Bank, Norton, Virginia; that on said day aforesaid, they had execution issued along with a garnishee summons, and placed in the hands of the sheriff of Wise county, to be levied on the money in said bank to the credit of J. C. Munsey, sometimes known as J. G. Munsey, said summons was served on the said bank on the 24th day of December, 1903.

Your complainants allege that on said date, the defendant J. C. (alias) J. G. Munsey, had on deposit, to his credit, in said bank, the sum of three hundred dollars (\$300.00) more than enough to pay your complainant's said judgment.

(2)

Your complainants allege, that when notice of the said garnishee summons was served on J. C. Munsey, that he went to said bank and tried to get the officials of the said bank to fraudulently transfer the said bank account to his wife, and on their refusal to do so, he opened up negotiations with your complainants, said attorney through A. B. Munsey, to compromise said judgment, and settle for an amount less than full amount due. Your complainant's attorney refused to make any compromise, knowing that the whole of said judgment was secured.

Your complainants allege, that the said J. C. Munsey, then, through his father F. A. Munsey, well knowing the premises, wrote to J. N. Betterton, one of your complainants who resides in Knoxville, ^{Tenn.} stating in said letter that J. C. Munsey was insolvent and that said debt could not be collected and proposed a settlement of the judgments on payment of fifty dollars (\$50.00); and your complainant, not having heard from his said attorney, as to the prospects of collecting said debt, since September, 1903, and relying on the statements made in the said letter, was induced to enter into a compromise contract, a copy of which is filed herewith, marked "Exhibit B" and asked to be made a part of this bill, ~~accepted~~ fifty dollars (\$50.00) in settlement of said claim, not knowing the true state of affairs.

Your complainants now allege, that said release contract ^{ought to} be set aside and held for naught, because it was obtained by fraud, misrepresentation and false statements contained in the said letter, written by F. A. Munsey to your complainant J. N. Betterton; in this, that it represented J. C. Munsey as being insolvent and that said debt could not be collected, and in the further fact that J. C. and F. A. Munsey, both knew that your complainants judgment was secured, every dollar of it, in the First National Bank of Norton, these facts they withheld from your complainant.

Your complainants, now allege, that at the date of said letter when said compromise contract was procured, that the said J. C. Munsey was solvent and good for his debts; and that your complainants are advised that the procurement of the said release contract of your complainant's judgment for the small sum of fifty dollars (\$50.00)

~~is an inadmissible bargain and is void~~

is an ^{con-}unscionable bargain, and one that a court of equity will rescind and set aside and hold for naught.

Your complainants further alleges, that said release contract should be set aside for the further reason that it was ~~l~~entered into by a mistake on the part of your ~~com~~complainant J. N. Betterton and without a knowlegde of the true state of facts connected with the transaction, which the defendants, J. C. and F. A. Munsey withheld, in their general overreachment, and fraud practice on your complainants, especially J. N. Betterton.

Your complainants allege that immediately on the discovery of the fraud practised upon him, in ~~obtain~~ obtaining said release contract by the defendants J. C. & F. A. Munsey, your complainant, J. N. Betterton, gave notice to the said J. C. Munsey that he repudiated said contract and settlement and directed his attorney to proceed to collect his judgment in full, a copy of said notice is here filed, marked "Exhibit C" and prayed to be made a part of this bill.

Your complainants allege, that after serving said notice on J. C. Munsey that said Munsey had the impudence to write your complainant, denying that he had ever, ~~cost~~ ^{cost} him any judgment, or debt, whatever, and denying that he had ever obtained a release contract.

Your complainants fur^{ther} allege that said defendant, J. C. Munsey after he obtained said release contract, wrote to your complainant's attorney, boasting how ~~how~~ ^{he} had "beat" Betterton & Co.

Your complainants now, further show your honor, that at the February term of the circuit court for Lee county, that on the calling of your ~~defen~~ complainant's "summons ~~on~~ suggestion" served on First National Bank of Norton, that said defendant J. C. Munsey produced the aforesaid release contract in court and claimed it as a settlement and payment of your complainant's said judgment, when your complainant's said summons ~~on~~ suggestion was dismissed.

Your complainants further allege, that the said J. C. ~~&~~ F. A. Munsey through their attorney J. Pike Powells, had their false and fraudulent letter returned to them, in which they made their representation, relying on which, said release contract was obtained.

(4)

In tender consideration whereof, your complainants are ~~xxxxx~~-remediless save by a court of equity, they pray that the said release contract, herewith filed, marked "Exhibit B" be set aside and held for naught; that their said judgment against J. C. Munsey be reinstated and restored to full force and effect, subject to a credit of fifty dollars (\$50.00) January 15th, 1904, and thirteen and ninty four hundred dollars (\$13.94) of the same date, and to this end they pray; that the said J. C. Munsey and F. A. Munsey be made parties defendant to this bill and answer the same, not on oath that being waived; that said release contract be fully set aside and complainant's said judgment be reinstated and restored to full force and effect, may proper process issue, and your complainants pray for all other relief generally that the nature of their case may require and equity seem meet and your complainants will ever pray etc.,

*m. H. Ely. }
A. M. Holmes } p. g.*

\$50.00



Knoxville, Tenn Jan. 15th 1904
Received ~~from~~ J. C. Muncy & F. A. Muncy

Fifty & no/100

Dollars.

in full of settlement of account claim and suit of
Betterton & Co. v. J. C. Muncy, on their a/c for about
\$42.00 and interest, by compromise and all other
claims and demands against said Muncy
& Defendant in said suit.

(Signed)

Betterton & Co.
Per A. J. M. Betterton

Witness:

J. Pike Powers, Jr.

"Exhibit ~~E~~" B"

E. R. WADE
MERCHANDISE BROKER
OFFICE AND WAREHOUSE
123 JACKSON ST.
KNOXVILLE, TENN.

Knoxville July 18th 1904

Mr J. C. Munn

Dear Sir

By Your Gr. V.

Owing to the fraud and want of knowledge
of the facts & law as Trustees of the late Herman
B. Betterton the separated the Settlement was Law
directed Betterton & Co. Atty Mr. M. G. Ely to collect the
est. & fund.

Yours Very Respectfully

J. W. Betterton

Copies of the Trustee for Betterton to
be made to day to J. C. Munn By Your Gr. V.

"Exhibit B" C

Betterton & Co.
vs $\frac{1}{2}$ Billin Chancery
J. C. Murrey & others

1914 1st Maymilia Bill
filed. Sp. not exe-
cuted. please filed.

Costs:

Clerk	\$3.96
Fey	1.50
Atty.	15.00
	<hr/>
	\$20.46

Dismissed at May
Term 1904.

LEE CIRCUIT COURT:

BETTERTON & COMPANY

vs.

J. C. Muncy Et Al:

DEMURRER:

The defendant F. A. Muncy demurs to the bill exhibited AGAINst him and J. C. Muncy under the above styled caption in the Circuit Court of Lee County and says that as to him, said bill is not sufficient in law in this, that it shows on its face that respondent has no interest in the subject matter in litigation and that he is, therefore, improperly joined and he demurs to said bill for said reasons.

F. A. Muncy, By counsel.

Irvine & Sluap.
P. D.

1
Betterson & Co.

Drum
7th May

J. C. Murray et al

Filed April 20th 1894
J. C. Murray
Clerk

J. C. Murray, by counsel.

BETTERSON & COMPANY

THE CIRCUIT COURT:

Bitterton & Co.

v.
F. A. Muncy et al

This cause came on again this day to be heard upon the bill of complaint, the demurrer of F. A. Muncy filed at rules, joined in said demurrer, the plea to the jurisdiction of the court filed by J. G. Muncy, ~~at the same rules~~ ^{and the plea to said plea} ~~demurrer~~ ^{was argued by counsel}, upon consideration of which it is adjudged, ordered & decreed that the demurrer as to F. A. Muncy, be & the same is hereby sustained, the court being of opinion that the bill shows no cause of action against said F. A. Muncy, and the ~~plea to the demurrer~~ to the plea of J. G. Muncy is overruled, and the plaintiffs not replying ~~to said~~ or further pleading to said plea, but admitting that the allegations thereof are true, it is adjudged, ordered & decreed that ~~this~~ the bill be dismissed and that the defendants recover their costs of the plaintiffs, and leave is given the plaintiffs to file an amended bill if so advised at rules, and this cause is stricken from the docket -

Bettinton & Co.

12 1/2 decm

J. A. Muncy

Em. C. B. No. 7,

page 489.

Ant. Ellis

H. C. W. Smith

May 11-04

LEE CIRCUIT COURT

BETTERTON & COMPANY

vs.

J. G. MUNCY ET AL:

In this cause the defendants suggest that the plaintiffs are not residents of this State and security for costs is required of them.

Irvin & Sloop
P.A.

J. G. Muncy, sued as J. C. Muncy
and F. A. Muncy.

By Counsel.

Betherton & Co,

vs { suggestion of
 { non-residency

J. C. Munnay et al

Filed April 20th 1894
H. C. Oving
Clerk.

BETHERTON & COMPANY

THE CIRCUIT COURT

BY Counsel.

AND W. A. MUNNAY.

J. C. MUNNAY, answerer to J. C. MUNNAY

LEE CIRCUIT COURT:

BETTERTON & COMPANY

vs.

J. C. MUNCY ET AL:

PLEA:

The defendant J. G. Muncy who is sued in this cause as J. C. Muncy, comes and says, that this cause should not be further had and maintained against him in this court, because this court had no jurisdiction thereof. He says that his co-defendant F. A. Muncy, is not a proper party defendant to this suit which is shown by the bill itself, as he has no interest in the subject matter in litigation, and that the only ground for jurisdiction for this ~~a~~ suit in the Circuit Court of Lee County, is the joinder with this respondent of the said F. A. Muncy: that the said F. A. Muncy is a resident of the County of Lee, but that respondent is not a resident of the County of Lee, but is a resident of the County of Wise in the State of Virginia, and he says that this suit can only be had and maintained against him in the said county of Wise, and that process in this cause was served on respondent in said County of Wise and not in said County of Lee, and this he is ready to verify.

Irvine & Slump
R.D.

J. G. Muncy, By Counsel.

VIRGINIA, WISE COUNTY, TO-WIT:

I, Wm. B. Carnes a Notary Public in and for the County aforesaid in the State of Virginia, certify that R. T. Irvine this day made oath before me in my county aforesaid, that he is the attorney for J. G. Muncy, respondent in the foregoing plea and that the statements made in said plea are true as he verily believes.

Given under my hand this the 20th. day of April, 1904.

W. B. Carnes N.P.

Given under my hand this first day of April, 1904.

believed.
and that the statements made in said plea are true as he verily believes.
this day made oath before me in my county aforesaid, that he is

attorney at law in the State of Virginia, certify that H. T. Irvine
I, WILLIAM B. GUNN, a Notary Public in and for the County
VIRGINIA, WISE COUNTY, TO-WIT:

J. G. Muncy, by Counsel.

not in said County of Lee, and that he is ready to verify.

Butterton & Co,

per

per

J. C. Muncy *clerk*

Filed April 20th 1904
H. T. Irvine
clerk

BUTTERTON & COMPANY

THE CIRCUIT COURT:

The Commonwealth of Virginia,

To the Sheriff of the County of Wise Greeting :

WHEREAS, on the 7th day of December, 1903 a writ of *fieri facias* was sued out of the Clerk's Office of the Circuit Court of the County of Lee by Betterton & Co

to the Sheriff of the County of Wise directed, returnable to the 1st Monday in February 1903, in favor of the said Betterton & Co against J. B. Munsey

for \$142.43, with legal interest thereon from the 25th day of November 1890, till paid, and \$11.43 costs; and a suggestion having been filed in the Clerk's Office aforesaid, by the said Betterton & Co

, that by reason of the lien of said writ of *fieri facias* there is a liability on J. M. Kelly, R. L. Irvine and The first National Bank, Norton, Va. Therefore, we command you that you summon the said J. B. Munsey, J. M. Kelly, R. L. Irvine and The first National Bank, Norton, Va. to appear before the Judge of our Circuit Court of the County of Lee at the court-house thereof, on the first day of the next regular term of our said Court (being the 7th day of next), to answer the said suggestion. And have then there this writ.

WITNESS, A. B. Munsey Clerk of our said Court, at the court-house, the 7th day of December 1903, and in the 12th year of the Commonwealth.

A. B. Munsey. Clerk.

Betterton & Co

vs. }

GARNISHEE

SUMMONS.

J. L. Munsey et al

Pennington Bros. p. q.

To Next Term

for Court.

executed on the 26 day
of Dec 1903 by delivering
a true copy of the within
notice to R. J. Gervin and
J. W. Kelly and J. L. Munsey
and John A. Eason president
of the First National Bank
of Norton, Va.

J. E. Dorton D. Sheriff
for W. H. Miller S. W.

Nancy R
Hickman
15

W. E. Shickman
H. M. N
H. S. Fargerson
=

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

Muncy *J. C. Muncy and F. A.*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held
for the said court, on the *1st* Monday in *May* 189*7*,

to answer a bill in chancery exhibited against *them* in our said court by *J. H. Bet-*
terlow and J. H. Whitlow, late partners in trade
under the firm name and style of Better-
low & Co.

And have then there this writ. Witness, *H. C. Ewing* ~~A. B. Munsey~~, Clerk of our said Court, at the
court-house, the *18th* day of *April* 189*7*, and in the 12 year of the
Commonwealth.

A copy Teste:

H. C. Ewing Clerk

Form No. 300 $\frac{1}{2}$.

vs.

{

**SUBPOENA
IN CHANCERY**

p. q.

To *Rules.*

Court.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

J. C. Muncey and F. A. Muncey

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the said court, on the *1st* Monday in *May* *1897*, to answer a

bill in chancery exhibited against *them* in our said court by *J. H. Better-*

and J. H. Whitlow, late partners in trade under the firm name and style of Betterton & Co

And have then there this writ.

Witness, *H. L. Ewing* ~~A. B. Muncey~~, Clerk of our said Court, at the court-house, the *18th* day of *April* *1897*, and in the 12 year of the Commonwealth.

H. L. Ewing Clerk

Betterton & Co.

vs. {

SUBPOENA

IN CHANCERY

J. C. Muncey et al

M. G. Ely

p. q.

To

W. May

Rules.

Circuit

Court.

*Not executed not
found this April 29th
1904. J. D. Weston D.C.
for P. M. Ball D.C.*